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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN MANUEL LOPEZ,

Defendant and Appellant.

B205180

(Los Angeles County
Super. Ct. No. LA055177)

APPEAL from a judgment of the Superior Court of Los Angeles County,
John Fisher, Judge. Affirmed.

William D. Farber, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

Juan Manuel Lopez appeals from the judgment entered following the denial of his motion to suppress evidence pursuant to Penal Code section 1538.5 and his no contest plea to possession of a controlled substance, methamphetamine, (Health & Saf. Code, § 11377, subd. (a)). He was placed on three years probation.

Appellant's motion for discovery pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 was heard and granted "as to issues of falsity." Following an in camera hearing, the court found discoverable material and ordered it be turned over to the defense.

The evidence at the suppression hearing established that on March 7, 2007, at approximately 4:50 p.m., Los Angeles Police Officer Robert Powers was with his partner Officer Daryl Blackhall in a marked patrol car on the 405 freeway when he saw a red Chevy Tahoe. Officer Powers ran the license plate and name for warrants and determined there was a warrant for a "Juan Lopez,"¹ the name of the registered owner of the vehicle. The officer continued to observe the vehicle and changed lanes to the number four lane. The Chevy Tahoe, in the number two lane, slowed to approximately 40 miles per hour in violation of Vehicle Code section 22400, subdivision (b). The Chevy Tahoe then moved into the number one lane and then back to the number two lane, "straddling," in violation of Vehicle Code section 21658, subdivision (a). As a result, the officers conducted a traffic stop on the 405 freeway at Burbank Boulevard. Officer Powers identified himself, asked appellant to step out of the vehicle and advised appellant there was a possible warrant on the owner of the vehicle. Because of the possible warrant and for officer safety, Officer Powers handcuffed appellant and patted him down for weapons, recovering a knife in appellant's right front pocket. Officer Powers searched appellant's vehicle, "a wingspan of the general[] area for weapons." After handcuffing appellant and searching him, Officer Powers verified the warrant was not for appellant.

¹ At the time, Officer Powers did not know appellant's full name or date of birth.

Officer Blackhall testified that he asked appellant if he could search appellant and appellant's vehicle and appellant responded, "Go ahead." Officer Blackhall searched appellant's pockets and from the right front coin pocket recovered a small bundle containing a white powdery substance resembling cocaine. During booking, appellant stated, "The cocaine is mine."

Appellant testified that he was driving at the speed of traffic, approximately 60 miles per hour, southbound on the 405 freeway in the number two lane. He slowed down because the officer's vehicle was in front of him and it slowed down. Appellant changed lanes and slowed down to avoid hitting the patrol car. Appellant then "proceeded to go around them because [his] exit was going to be coming up" When he "went around the officer[s]," they got behind him. After the officers made the traffic stop, appellant walked to the back of his vehicle and was handcuffed and searched. Appellant asked why he was stopped and the officers did not tell him. The officers never asked him for his driver's license, registration, or if he had any warrants. Appellant claimed he had never given Officer Powers permission to search his person. He never said it was his cocaine because he knew what he had was not cocaine. It was "crystal meth."

Following the denial of his motion to suppress evidence, appellant pled no contest to the charge.

On December 19, 2007, appellant filed a motion to withdraw his plea. He asserted that when he entered his plea he was informed he would be participating in a drug treatment program pursuant to Proposition 36² and did not understand he would be giving up his right to further pursue his claim that he was stopped and searched without probable cause.

On December 21, 2007, the court explained that appellant did have a right to appeal the court's ruling on the suppression motion. Appellant's attorney explained she

² Penal Code section 1210.1.

had so advised appellant and that when appellant's notice of appeal was rejected as untimely because appellant had not yet been sentenced, appellant stated he wanted to withdraw his plea entirely.

Appellant then requested that the court appoint a different attorney under *People v. Marsden* (1970) 2 Cal.3d 118 based on counsel's "lack of communication." Appellant claimed his attorney had not been communicating with him. He called her and left messages and counsel never returned his calls.

Counsel responded that as far as she knew, appellant had not called her since his last court date. Appellant had indicated he wanted to file a motion to withdraw his plea, and counsel had done so. Appellant stated he wanted a copy of his file, and counsel had advised him her office did not give defendants a copy of their file unless they were representing themselves.

Appellant's *Marsden* motion and motion to withdraw his plea were denied.

Appellant expressly refused an opportunity to be sentenced under Proposition 36.

After review of the record, appellant's court-appointed counsel filed an opening brief requesting this court to independently review the record pursuant to the holding of *People v. Wende* (1979) 25 Cal.3d 436, 441.

On August 5, 2008, we advised appellant that he had 30 days within which to personally submit any contentions or issues which he wished us to consider and no response has been received to date.

We have examined the entire record, including the transcript of and the documents produced at the *Pitchess* hearing,³ and are satisfied that no arguable issues exist and that appellant has, by virtue of counsel's compliance with the *Wende* procedure and our

³ On November 4, 2008, we filed an order remanding the case to the trial court with directions to hold a hearing to augment the record on appeal pursuant to *People v. Mooc* (2001) 26 Cal.4th 1216, 1231. We ordered the court to convene a hearing at which all the documents it previously reviewed in camera would be produced, to mark the materials as court exhibits, to make copies, and to transmit the copies under seal to this court. On April 15, 2009, we received copies of the documents.

review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

DISPOSITION

The judgment is affirmed.

WILLHITE, Acting P. J.

We concur:

MANELLA, J.

SUZUKAWA, J.